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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 THE CITY AND COUNTY OF SAN
FRANCISCO, CALIFORNIA and THE
17 PEOPLE OF THE STATE OF
CALIFORNIA, Acting by and through San
18 Francisco City Attorney DENNIS J.
HERRERA,

19 Plaintiffs,

20 v.

21 PURDUE PHARMA L.P., et al.

22 Defendants.
23

Case No. 3:18-cv-07591-CRB-JSC

**JOINT STATUS UPDATE RE
WALGREENS' DUE DILIGENCE
PRODUCTIONS**

Judges: Hon. Charles R. Breyer and Jacqueline
Scott Corley

On June 16, the Court Ordered the following:

- Walgreens shall produce (1) the electronic due diligence notes from the 12 stores associated with Walgreens’ previous due diligence checklist production and (2) 500 hardcopy prescriptions per year from the same 12 stores dating back to 2010.
- The Parties shall determine a way to link the electronic notes, hardcopy prescriptions, and due diligence checklists (collectively, “due diligence records”) to the dispensing data in Plaintiff’s Red Flag analysis.
- The Parties shall submit a status update to the Court by **June 30, 2021** regarding the progress that the Parties have made linking the due diligence records to Plaintiff’s Red Flag analysis and the expected date of completion.
- Plaintiff shall provide Walgreens with an updated Red Flag analysis on or before **June 30, 2021**.

Dkt. No. 578. The Parties’ report follows.

I. WALGREENS’ STATEMENT

Electronic Notes. Walgreens made its first production of electronic notes on June 29, 2021. This production included 14,424,504 records from several electronic fields. Ex. 1, Wetzold Declaration at ¶ 8. Walgreens anticipates producing additional records from several other electronic fields by late July, including *Annotation* notes, which are stored on a separate system that requires the work of a separate team. *Id.* at ¶¶ 9, 12. Walgreens anticipates finishing the production of all of its electronic notes by the week of August 23. *Id.* at ¶ 13. Walgreens is working as efficiently as it can to finish these productions. *See id.*

Hard Copy Prescriptions. Walgreens is producing 5,000 hard copy prescriptions in San Francisco, dating back ten years, consistent with this Court’s instructions and order. During the meet and confer process, Plaintiff argued that Walgreens should produce 5,500 hard copy prescriptions. Walgreens does not intend to do so, given that this Court instructed Walgreens to produce 5,000 prescriptions, dating back 10 years. *See* 6/16/21 Hearing Tr. at 30:23-31:4. Walgreens expects but cannot guarantee that this production will be complete by the end of

1 August, given the novelty of this undertaking and the fact that Plaintiff still has not produced its
2 revised red flag analysis, which is necessary before the collection process can even begin.

3 Walgreens' experience in Track Three is instructive but incomplete. The MDL court
4 ordered the Track Three defendants to identify the prescriptions at issue by May 28. The
5 Special Master then urged defendants to try to complete their production of those 2,000 hard
6 copy prescriptions by July 9, which he recognized was "aspirational." *See* Ex. 2, Desh Decl. at
7 ¶ 6. Walgreens anticipates meeting that deadline for hard copy prescriptions still kept at its
8 Ohio stores. *See id.* But the San Francisco production will be two and a half times as large as
9 the Track 3 sample, and Walgreens is *targeting* mid-August for its production of hard copy
10 prescriptions stored at Walgreens' San Francisco stores. *Id.* The prescriptions stored at Iron
11 Mountain will take longer. *See id.* at ¶ 7. As of today, June 30, Iron Mountain has been unable
12 to locate a single prescription from the Track Three sample. *See id.* at ¶ 7. Given the
13 uncertainty still surrounding the production timeline in Track Three, and the novelty of this
14 process generally, Walgreens is targeting the end of August for the production of San Francisco
15 hard copy prescriptions stored at Iron Mountain, but cannot make that estimate with certainty.
16 *See id.* at ¶¶ 6, 10. Walgreens will, however, work as quickly as possible to identify, locate,
17 collect, and produce these prescriptions upon receipt of Plaintiff's red flag analysis.

18 ***Hard-Copy Checklists.*** Pursuant to the Court's order at Doc. 578, Walgreens has
19 reviewed and unredacted the prescription numbers on all 33,159 of its previously produced
20 hard-copy target drug good faith dispensing checklists and refusal-to-fill documents. Walgreens
21 is conducting final quality control checks and preparing these documents for production.
22 Walgreens plans to produce these documents to Plaintiff next week, pursuant to "Attorneys'
23 Eyes Only" review under the Court's protective order, along with unredacted dispensing data
24 (*i.e.*, dispensing data that includes prescription numbers), in order to allow Plaintiff to link the
25 hard-copy due diligence documents to prescriptions in Walgreens' dispensing data.

26 II. PLAINTIFF'S STATEMENT

27 Plaintiff respectfully submits that the Court should set a **deadline of August 16** for the
28 completion of the entire due diligence production.

1 Walgreens represents that the *checklist* redactions have already been removed and that
2 those documents—along with the overlay required for the association—should be produced next
3 week. Plaintiff appreciates this effort and anticipates no problem with that timeline.

4 Walgreens’ projected timing for the remainder of the production is more problematic.
5 As to *electronic notes*, Walgreens represented in a June 29 email that its production “should be
6 complete by the week of August 16.” The anticipated timing of the *hard copy prescription*
7 production is less clear. For documents collected in stores, Walgreens believes it “almost
8 certainly” will take longer than “5.5 weeks.” Producing hard copies from Iron Mountain is,
9 according to Walgreens, “significantly more burdensome”—which presumably means
10 Walgreens anticipates producing these documents as late as September, or even October.

11 Plaintiff understands this is a big undertaking, but Plaintiff cannot accept a timeline so
12 protracted and so uncertain. As has been discussed at length, the due diligence discovery is
13 central to this case. Plaintiff must have enough time to process and analyze the voluminous data
14 to inform both fact discovery (including depositions) and the expert reports due on October 5.
15 Dkt. No. 572. Moreover, Plaintiff cannot evaluate whether Walgreens conducted due diligence
16 on any particular prescription until the entire production is complete. Both parties need a
17 deadline. Plaintiff submits that deadline should be August 16—two months after the Court’s
18 order and seven weeks before expert reports are due. Walgreens has shown repeatedly that,
19 with a nudge from the Court, it can make complicated productions much faster than initially
20 projected, and anything later than August 16 would jeopardize Plaintiff’s ability to make full
21 use of the key discovery the parties have spent months litigating.

22 Finally, Plaintiff notes that even though the Court ordered Walgreens to produce “500
23 hardcopy prescriptions per year from the same 12 stores dating back to 2010,” Walgreens
24 apparently intends to produce only 250 prescriptions from the latter half of 2010, and none from
25 the first half. Plaintiff does not understand or agree with this interpretation of the Court’s order.
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27
28

1 DATED: June 30, 2021

Respectfully submitted,

/s/ Kaspar J. Stoffelmayr

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24 DATED: June 30, 2021

Respectfully submitted,

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ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from the above signatories.

Dated: June 30, 2021

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Kaspar J. Stoffelmayr

Attorney for Defendant Walgreen Co.

CERTIFICATE OF SERVICE

I hereby certify that, on June 30, 2021, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

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